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DOC #: \_\_\_\_\_  
DATE FILED: 12/2/2024

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

ANTONIA PHILLIPS, et al.

Plaintiffs,

- against -

CITY OF NEW YORK, et al.

Defendants,

**03 Civ. 4887 (VM)**

**ORDER**

**VICTOR MARRERO, United States District Judge.**

The Court has received a letter from Wells Fargo Bank, N.A. ("Wells Fargo" or the "Bank"), trustee of the Henesy Feliz Supplemental Needs Trust (the "Trust"), requesting approval to retain legal counsel to advise the Bank on proper administration of the Trust. Specifically, Wells Fargo requests to engage Mr. Scott Lavin of Fox Rothschild LLP.

The Court is mindful that as the trustee, Wells Fargo has the authority to retain legal counsel without prior court approval. (See Trust Agreement § 2.7.) But even if the trustee is authorized to retain counsel without prior approval, this Court still has a duty to monitor payments from the Trust to ensure such expenditures are warranted and reasonable. (See, e.g., Trust Agreement §§ 2.2, 2.3, 4.4, 4.5, 4.8, 4.9.)

Under New York law, a trustee is required to exercise "reasonable care, diligence and prudence." N.Y. EPTL § 11-1.7(a)(1). Although courts generally will not interfere with

a trustee's exercise of discretionary power, courts are nonetheless entitled "not only to accounting information but also to relevant, general information concerning the bases upon which the trustee's discretionary judgments have been or will be made." Restatement (Third) of Trusts § 50 (2003), Comment (b).

The Trust Agreement includes several provisions outlining the Court's role in overseeing expenditures of the Trust's funds, some of which are reproduced below:

- Section 4.8 - Continuing Jurisdiction: The United States District Court, Southern District, shall have continuing jurisdiction over the performance of the duties of Trustee, the interpretation, administration, and operation of this Trust, the appointment of a successor Trustee and all other related matters.
- Section 4.5 - Annual Accounts: The Trustee shall render or cause to have rendered an annual account of the administration of the Trust to the court having jurisdiction over the Trustee, the Guardian of the Beneficiary and any other representative as appointed and required by said court. This accounting shall be made in the month prescribed by the court. A sufficient accounting shall be deemed as having been made by the submission to the court of a copy of the Federal fiduciary income tax return filed for the Trust as well as the annual accounting required by the court having jurisdiction over the Trustee and in the form and manner required by SCPA § 1719. Each annual accounting shall be judicially approved in accordance with the rules of the court having jurisdiction over the Trustee.

In accordance with the Court's duty to ensure reasonable

expenditure of Trust monies, the Court hereby orders Wells Fargo to submit a detailed statement setting forth the services counsel will be providing to the Bank in furtherance of proper Trust administration. The Court further orders Wells Fargo to submit a chart of counsel's hourly rates for legal fees and an estimate of anticipated charges.

**SO ORDERED.**

Dated: New York, New York  
December 2, 2024



Victor Marrero  
U.S.D.J.